



Department of Safety and Homeland Security
303 Transportation Circle
Dover, DE 19901

State of Delaware

Request for Proposals for Professional Services

Physical Testing & Laboratory Services

Contract No. SHS-11-016-PhyTestLab

October 24, 2011

- Deadline to Respond -
Thursday, November 17, 2011
3 p.m. EDT

I. Overview

The State of Delaware, the Department of Safety and Homeland Security seeks Physical Testing & Laboratory Services. This request for proposals ("RFP") is issued pursuant to 29 *Del. C.* §§ 6981 and 6982.

The proposed schedule of events subject to the RFP is outlined below:

Public Notice	Date: Monday, October 24, 2011
Mandatory "Pre-bid" meeting	Date: N/A
Deadline for Receipt of Proposals	Date: Thursday, November 17, 2011, Office of the Secretary's HR Conference Room
Notification of Award	Date: Friday, December 30, 2011

Each proposal must be accompanied by a transmittal letter which briefly summarizes the proposing firm's interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP which the applicant may have taken in presenting the proposal. **Furthermore, the transmittal letter must attest to the fact that no activity related to this proposal contract will take place outside of the United States.** The State of Delaware reserves the right to deny any and all exceptions taken to the RFP requirements.

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

II. Scope of Services

1. PURPOSE:

- 1.1 The Division of State Police is seeking physicians and/or medical facilities to provide the following:
- Annual physical examinations with lab work for incumbent State Troopers
 - Pre-employment physical examinations with lab work for Recruit Trooper applicants
 - Pre-employment physical examinations with lab work for Telecommunication Specialist, Sex Offender Registry Enforcement Agent, and Drug Control & Enforcement Agent applicants
 - Periodic fit-for-duty evaluations for both trooper and civilian employees as a condition of continued employment and to ensure the essential job functions can be met as outlined in Appendix A, B, and C
 - Periodic examinations as listed in Appendix C - #3.
- 1.2 It is highly desirable that the physician and/or medical facility be able to provide the laboratory work in addition to the physical examinations.

2. LOCATION:

- 2.1 It is a requirement to provide a physician and/or permanent medical facility in each county:
- New Castle County
 - Kent County
 - Sussex County
- 2.2 The Division averages 400-500 physicals per year. This number is only an estimate and the Division reserves the right to increase or decrease this amount during the contract period.
- 2.3 It is important to note that incumbent employees have an option to use their personal physicians to satisfy the annual physical examination requirement, at their own expense.

3. STATEMENT OF QUALIFICATIONS:

- 3.1 A statement of qualifications must be submitted in a separate binder and include a description of organizational and Staff experience, and resumes of proposed staff.
- A. Organizational and Staff Experience - Offerers must describe their qualifications and experience to perform the work described in this Invitation to Bid. Information about experience should include direct experience with the specific subject-matter area.
- B. References - Special notification must be made of similar or related programs performed and must include organization names, addresses, names of contact persons, and telephone numbers of such reference. A minimum of three (3) references is requested.

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

- C. Personnel - Full-time and part-time staff, proposed Consultants, and subcontractors who will be assigned direct work on this project shall be identified. Information is required which will show the composition of the task or work group, its specific qualifications and recent relevant experience. The technical areas, character, and extent of participation by any subcontractor or Consultant activity must be indicated and the anticipated sources will be identified.

4. SERVICES TO BE PERFORMED:

4.1 Separate prices for the following services are requested:

- A. Basic physical examination
- B. Itemized listing and pricing for laboratory testing listed in Laboratory Procedures - # 5
- C. Chest X-Rays (single view)
- D. Audiogram/Booth
- E. Visual Acuity – Titmus
- F. Pulmonary Function Test
- G. Review of OSHA Respirator Medical Evaluation Questionnaire
- H. Non-DOT Drug Screen with Chain of Custody Handling
- I. Electrocardiogram
- J. Heavy Metals Blood Test – Arsenic, Lead, and Mercury

4.2 The basic physical examination shall include the minimum following components:

- A. Observation
 - 1. Physician should always observe the patients:
 - a. State of health
 - b. Stature
 - c. Habits
- B. Vital Signs
 - 1. Blood pressure
 - 2. Heart rate (pulse)
 - 3. Respiratory rate (not mandatory)
 - 4. Temperature (not mandatory)
- C. Head
 - 1. Skull and scalp
 - 2. Eyes
 - 3. Ears
 - 4. Nose
 - 5. Mouth and throat (gums, teeth, and tonsils)
- D. Neck
 - 1. Lymph nodes
 - 2. Thyroid glands
- E. Chest and Lungs
- F. Heart

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

G. Abdomen

1. Liver
2. Spleen
3. Kidney

H. Neurologic Examination

1. Motor
 - a. Muscle tone
 - b. Strength
 - c. Coordination
2. Sensory
 - a. Pain
 - b. Touch
 - c. Position
 - d. Reflex (vibration)

I. Rectal Examination for Men - Mandatory (unless the officer declines)

1. Anus
2. Rectum
3. Prostate

J. Breast, Genital and Rectal Examinations :NOT TO BE PERFORMED ON FEMALE PATIENTS unless (a) specifically requested, or (b) a compelling medical reason exists for doing so, in which case the reason must be documented on the form.

4.3 The following procedures are required for each specific group:

A. Incumbent Troopers – Annual Examinations

1. Basic Physical Exam
2. Lab Work
3. UA
4. Audiogram/Booth (for Aviation and Firearms Training Unit personnel **only**)
5. Visual Acuity – Titmus (when requested by Agency)
6. Heavy Metals – Arsenic, Lead, and Mercury (when requested by Agency for Firearms Training Unit personnel **only**)

B. Conditional Hires for Recruit Trooper, Drug Control Enforcement Agent, and Sex Offender Registry Enforcement Agent applicants

1. Basic Physical Exam
2. Lab Work
3. UA
4. EKG
5. Chest X-ray – single view
6. Audiogram/Booth
7. Non-DOT Drug Screen with Chain of Custody Handling

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

- C. Conditional Hires for Telecommunications Specialist/Civilian Positions
 - 1. Basic Physical Exam (**absolutely no lab work to be performed**)
 - 2. Audiogram/Booth
 - 3. Visual Acuity - Titmus

5. **LABORATORY PROCEDURES:**

- 5.1 Laboratory tests to be performed consist of the following:
 - A. Urinalysis
 - B. Complete Blood Count with differential
 - C. Lipid Profile B
 - D. Prostatic Specific Antigen (only to personnel 40+ years of age and older)
 - E. Heavy Metals Blood Test – Arsenic, Lead, and Mercury (Firearms Training Unit personnel **only**)
 - F. Non-DOT Drug Screen with Chain of Custody Handling (Recruit Trooper, Drug Control & Enforcement Agent, and Sex Offender Registry Agent applicants **only**)
- 5.2 The following tests or other tests may be performed if, in the opinion of the physician, the information is essential to diagnose the individual's state of health and/or ability to perform necessary work requirements. Any additional testing deemed necessary by physician, not listed above, will need prior approval from the Human Resources Office.
 - A. Chest X-Rays (single view)
 - B. Audiogram/Booth - (mandatory requirement for Aviation & Firearms Training Unit personnel **only**)
 - C. Electrocardiogram
 - D. Pulmonary Fitness Test – (when required during the Review of the OSHA Respirator Medical Evaluation Questionnaires)

6. **RESULTS OF EXAMINATION:**

- 6.1 Turnaround time for providing physical examination results to the Division should be within 2 to 3 workdays, and no more than 5 working days.
- 6.2 The original results of the physical examination and laboratory work shall be forwarded to the Director of Human Resources.
- 6.3 A copy of the physical examination results shall also be provided to the employee with the exception of fit-for duty evaluations, which will be forwarded to the Director of Human Resources only.
- 6.4 The examining physician is responsible for reviewing the results of all tests that are ordered. DO NOT evaluate a patient "pending laboratory work", and DO NOT assume that the results will be reviewed elsewhere.
- 6.5 The examining physician shall be available, within a reasonable amount of time, for consultation with the Division's designated representative to discuss or clarify any questions about the results. Physician shall also be available to answer questions, and/or give medical opinions in regard to any Divisional employee, i.e. effects of medications on employee performance.

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

7. MEDICAL HISTORY FORMS:

- 7.1 The Division will provide the following forms:
- A. Delaware State Police Applicant Medical History Booklet
 - B. Delaware State Police Medical History Form
 - C. OSHA Respirator Medical Evaluation Questionnaire – DSP Modified Version
 - D. As needed, required forms for periodic examinations/evaluations
- 7.2 All original medical forms shall be returned to the Director of Human Resources with all medical reports and results, except those which are prohibited by The Genetic Information Nondiscrimination Act (GINA) of 2008.
- 7.3 The front page and the top portion of the back of the medical history form will be completed by the employee, signed, and dated.
- 7.4 The remainder of the form shall be completed by the physician or qualified designee as follows:
- A. Vital Signs - Record the vital signs (blood pressure, pulse rate, height and weight are required; respiration and temperature are not), and the results of the hearing (normal or abnormal) and all required information on vision.
 - B. History - Briefly elaborate on all items marked "yes" by the patient. For example, if the patient answered "yes" to "surgery", a brief explanation such as "Appendectomy, 1963", will enable us to determine its relevance.

Be certain that either a "yes" or "no" response is recorded for EACH ITEM...DO NOT ALLOW ANY BLANKS. If the patient does not complete the form we cannot make any assumptions as to his/her response.

- C. Physical Examination - Check off "NORMAL" or "ABNORMAL" for each item unless you did not perform the examination. In that case, write "N/A" for "Not Applicable".
 - 1. The physician shall write a brief summary of the total overall health results.
 - 2. The physician shall check off blocks "Medical qualified for job", "Patient advised of positive findings", and "Patient referred to personal physician".
 - 3. The physician shall sign and date the form.

8. APPLICANT TESTING:

- 8.1 It is a requirement of the Division to obtain physical examinations and medical history information on applicants given a conditional offer of employment for the positions of Recruit Trooper, Telecommunications Specialist, Drug Control & Enforcement Agent, and Sex Offender Registry Enforcement Agent. Please refer to section 4.3 - B and C.

9. BILLING AND PAYMENT:

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

- 9.1 All billings submitted to the Delaware State Police shall be itemized and include a minimum of the following:
 - A. Name of Employee
 - B. Date of Services
 - C. Itemized description of services performed
 - D. Charge for each itemized service
- 9.2 Upon receipt of all completed medical reports and the itemized billing, payment will be processed and mailed within thirty (30) days.
- 9.3 Invoices cannot be processed without first receiving all results and required forms.

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

Scope of Services Appendix A

ESSENTIAL JOB FUNCTIONS – UNIFORMED TROOPERS

1. Basic police functions including, but not limited to, the activities listed below are considered essential job functions of all uniformed positions regardless of rank and/or assignment and therefore, must be able to be performed without accommodation except during a temporary rehabilitative period.
 - A. Driving a patrol vehicle for extended periods.
 - B. Getting in and out of vehicles.
 - C. Affecting a forcible arrest; possible physical confrontations (wrestling with suspects).
 - D. Biannual firearms re-certification which involves shooting a semi-automatic pistol and shotgun from standing and kneeling positions during the course of a training day.
 - E. Climbing obstacles and traversing rough terrain quickly.
 - F. Manual traffic control involving prolonged standing and requiring mental and physical alertness and dexterity.
 - G. Working under stressful and dangerous conditions, in inclement weather and for prolonged periods without the benefit of rest or meal breaks, and working rotating shifts.
 - H. Communicating effectively with people of various socioeconomic backgrounds.
 - I. Acutely utilize sensory systems to discern various stimuli of danger and to maximize operational effectiveness.
2. Annual PT test measures an individual's ability to perform physical tasks that may be required to function as a police officer. PT requirements include:
 - A. Flexibility – sit and reach exercises in which individual must sit on a flat surface with legs extended out in front and extend his or her fingers beyond the toes to the second joint of the fingers.
 - B. Push-ups – individuals must perform as many push-ups as possible within a one -minute time frame. Females perform a modified push-up extending out from a kneeling position.
 - C. Sit-ups – individuals perform as many sit-ups as possible within a one minute time frame. A bent knee position is used.
 - D. Aerobic Fitness – an exercise EKG evaluation on a treadmill with an oxygen uptake analysis to measure aerobic fitness.

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

Scope of Services Appendix B

ESSENTIAL JOB FUNCTIONS

TELECOMMUNICATION SPECIALISTS

1. The activities listed below are considered essential job functions of Telecommunication positions:

9-1-1 Centers

- Receives and routes calls to and from the center to the appropriate response agency based on the priority and nature of call.
- Receives and dispatches information to state and municipal police agencies using the Public Safety 10-code, 800 MHz radios, telephones, Computer Aided Dispatch (CAD) and other telecommunications equipment.
- Directs police officers to scene of crimes, accidents or complaints reading maps, grids, and charts to ensure destination is reached.
- Monitors an 800 MHz radio system in order to provide assistance during emergency situations.
- Talks to citizens requesting assistance during crisis situations and relays emergency information to appropriate response agency.
- Inputs and retrieves information from Computer Aided Dispatch (CAD), National Crime Information Center (NCIC), and Criminal Justice Information System (CJIS) to relay to officers or other criminal justice agencies.
- Reads maps to find locations to relay to officers and locate citizens in need of help.
- Maintains a valid certification in Emergency Medical Dispatch (EMD) at SUSCOM and KENTCOM and maintains a valid Emergency Fire Dispatch (EFD) at KENTCOM.
- Works under stressful conditions for prolonged periods without the benefit of a scheduled meal break away from the assigned station and works rotating shifts.
- Ability to work under pressure and stress while making life and death decisions.

HQ Communications

- Performs various emergency call-outs using the proper notification methods and equipment.
- Performs in the fullest capacity as a “help-desk” and information resource center to end-users.
- Maintains and monitors nuclear siren equipment and participates in federally mandated drills.
- Monitors state-wide alarm systems and makes notifications to proper authorities.
- Maintains quality and authorizes transmitted data of routine and emergency telecommunication messages through State and NLETS systems.
- Performs timely and accurate entries/clears into the local and state-wide systems.
- Maintains “Central Message Processor” continual operation and network availability.
- Performs trouble-shooting techniques and initiating corrective actions.
- Monitors radios and dispatch as required.

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

- Center serves as a 24-hour comprehensive support service, in data communications operations, radio communications operations and radio, data, and telephone administration. All functions are directly supportive of the criminal justice community, emergency management agencies, nuclear power plants and various other state agencies.
- Works under stressful conditions for prolonged periods without the benefit of a scheduled meal break away from the assigned station and works rotating shifts.

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

Scope of Services Appendix C

ESSENTIAL JOB FUNCTIONS

DRUG CONTROL & ENFORCEMENT AGENT

- K. 2. The activities listed below are considered essential job functions of Drug Control & Enforcement Agents.

- Manages an assigned case load of criminal complaints involving the diversion of controlled substances
- Writes detailed reports of actions taken in regards to cases
- Arrests violators to include executing warrants, sizing and securing evidence
- Coordinates investigations and arrests with other state and federal enforcement jurisdictions
- Investigates consumer complaints regarding the incompetence of pharmacists
- Appearances as State's witness in court
- Biannual firearms re-certification which involves shooting a semi-automatic pistol and shotgun from standing and kneeling positions during the course of a training day

ESSENTIAL JOB FUNCTIONS - SEX OFFENDER REGISTRY ENFORCEMENT AGENT

3. The activities listed below are considered essential job functions of Sex Offender Registry Enforcement Agents.

- Manages an assigned case load of convicted sex offender investigation
- Writes detailed reports of actions taken in regards to cases
- Conducts random and periodic checks of addresses of those that are registered sex offenders
- Responsible for locating and arresting those sex offenders that fail to re-register addresses and places of employment
- Conducts crime prevention presentations to schools and daycare providers
- Biannual firearms re-certification which involves shooting a semi-automatic pistol and shotgun from standing and kneeling positions during the course of a training day
-

PERIODIC EXAMINATIONS

The examinations and testing procedures listed below are required on an as needed basis:

- DOT – CDL Certification
- SCUBA Physical Examination
- Explosive Ordnance Disposal Physical Examination
- Review of OSHA Respirator Evaluation Questionnaire
- Pulmonary Function Test
- Audiogram/Booth
- Heavy Metals Blood Test – Arsenic, Lead, and Mercury

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

III. Required Information

The following information shall be provided in each proposal in the order listed below. Failure to respond to any request for information within this proposal may result in rejection of the proposal at the sole discretion of the State.

A. Minimum Requirements

1. Delaware business license:
Provide evidence of a Delaware business license or evidence of an application to obtain the business license.
2. Professional liability insurance:
Provide evidence of professional liability insurance in the amount of \$1,000,000.00.
3. The transmittal letter must attest to the fact that no activity related to this proposal contract will take place outside of the United States

B. General Evaluation Requirements

1. Experience and Reputation
2. Expertise (for the particular project under consideration)
3. Capacity to meet requirements (size, financial condition, etc.)
4. Location (geographical)
5. Demonstrated ability
6. Other criteria necessary for a quality cost-effective project

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

IV. Professional Services RFP Administrative Information

A. RFP Issuance

1. Obtaining Copies of the RFP

This RFP is available in electronic form [only] through the State of Delaware, Department of Safety and Homeland Security website at <http://dshs.delaware.gov/information/rfp.shtml> and the State of Delaware Procurement website at <http://bids.delaware.gov/>. Paper copies of this RFP will [not] be available.

2. Public Notice

Public notice has been provided in accordance with 29 *Del. C.* § 6981.

3. Assistance to Vendors with a Disability

Vendors with a disability may receive accommodation regarding the means of communicating this RFP or participating in the procurement process. For more information, contact the Designated Contact no later than ten days prior to the deadline for receipt of proposals.

4. RFP Designated Contact

All requests, questions, or other communications about this RFP shall be made in writing to the State of Delaware. Address all communications to the person listed below; communications made to other State of Delaware personnel or attempting to ask questions by phone or in person will not be allowed or recognized as valid and may disqualify the vendor. Vendors should rely only on written statements issued by the RFP designated contact.

Kimberly Cuffee 302-672-5496 Kimberly.Cuffee@state.de.us

A. U.S. Mail (not recommended because the mail is not delivered to this building at a set time):

Department of Safety and Homeland Security
Delaware State Police
P.O. Box 430
Dover, Delaware 19903

B. Other Delivery: Department of Safety and Homeland Security

Delaware State Police
1441 N. DuPont Highway
Dover, Delaware 19901

To ensure that written requests are received and answered in a timely manner, electronic mail (e-mail) correspondence is preferred, but other forms of delivery, such as postal and courier services can also be used.

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

5. Consultants and Legal Counsel

The State of Delaware may retain consultants or legal counsel to assist in the review and evaluation of this RFP and the vendors' responses. Bidders shall not contact consultant or legal counsel on any matter related to the RFP.

6. Contact with State Employees

Direct contact with State of Delaware employees other than the State of Delaware Designated Contact regarding this RFP is expressly prohibited without prior consent. Vendors directly contacting State of Delaware employees risk elimination of their proposal from further consideration. Exceptions exist only for organizations currently doing business in the State who require contact in the normal course of doing that business.

7. Organizations Ineligible to Bid

Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including subcontractors currently debarred or suspended is ineligible to bid. Any entity ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFP.

8. Exclusions

The Proposal Evaluation Team reserves the right to refuse to consider any proposal from a vendor who:

- a)** Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- b)** Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor;
- c)** Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes;
- d)** Has violated contract provisions such as:
 - 1)** Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;
or
 - 2)** Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

- e) Has violated ethical standards set out in law or regulation; and
- f) Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including suspension or debarment by another governmental entity for a cause listed in the regulations.

B. RFP Submissions

1. Acknowledgement of Understanding of Terms

By submitting a bid, each vendor shall be deemed to acknowledge that it has carefully read all sections of this RFP, including all forms, schedules and exhibits hereto, and has fully informed itself as to all existing conditions and limitations.

2. Proposals

To be considered, all proposals must be submitted in writing and respond to the items outlined in this RFP. The State reserves the right to reject any non-responsive or non-conforming proposals. Each proposal must be submitted with five (5) paper copies and one (1) electronic copy on CD. One of the paper copies shall be marked "Master Copy" and will contain original signatures in all locations requiring an offeror signature.

All properly sealed and marked proposals are to be sent to the State of Delaware and received no later than **3 p.m. EDT on Thursday, November 17, 2011**. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

A. U.S. Mail (***not recommended because the mail is not delivered to this building at a set time***):

Department of Safety and Homeland Security
Secretary's Office - Central Fiscal Office
P.O. Box 818
Dover, Delaware 19903

B. Other Delivery: Department of Safety and Homeland Security
Office of the Secretary, Attn: Central Fiscal Office
303 Transportation Circle, Suite 220
Dover, Delaware 19901

Any proposal submitted by US Mail shall be sent by either certified or registered mail. Proposals must be received at the above address no later than **3 p.m. EDT on Thursday, November 17, 2011**. Any proposal received after this date shall not be considered and shall be returned unopened. The proposing vendor bears the risk of delays in delivery. The contents of any proposal shall not be disclosed as to be made available to competing entities during the negotiation process.

Upon receipt of vendor proposals, each vendor shall be presumed to be thoroughly familiar with all specifications and requirements of this RFP. The failure or omission to examine any form, instrument or document shall in no way relieve vendors from any obligation in respect to this RFP.

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

3. Proposal Modifications

Any changes, amendments or modifications to a proposal must be made in writing, submitted in the same manner as the original response and conspicuously labeled as a change, amendment or modification to a previously submitted proposal. Changes, amendments or modifications to proposals shall not be accepted or considered after the hour and date specified as the deadline for submission of proposals.

4. Proposal Costs and Expenses

The State of Delaware will not pay any costs incurred by any Vendor associated with any aspect of responding to this solicitation, including proposal preparation, printing or delivery, attendance at vendor's conference, system demonstrations or negotiation process.

5. Proposal Expiration Date

Prices quoted in the proposal shall remain fixed and binding on the bidder at least through Friday, December 30, 2011. The State of Delaware reserves the right to ask for an extension of time if needed.

6. Late Proposals

Proposals received after the specified date and time will not be accepted or considered. To guard against premature opening, sealed proposals shall be submitted, plainly marked with the proposal title, vendor name, and time and date of the proposal opening. Evaluation of the proposals is expected to begin shortly after the proposal due date. To document compliance with the deadline, the proposal will be date and time stamped upon receipt.

7. Proposal Opening

The State of Delaware will receive proposals until the date and time shown in this RFP. Proposals will be opened only in the presence of the State of Delaware personnel. Any unopened proposals will be returned to Vendor.

There will be no public opening of proposals but a public log will be kept of the names of all vendor organizations that submitted proposals. The contents of any proposal shall not be disclosed to competing vendors prior to contract award.

8. Non-Conforming Proposals

Non-conforming proposals will not be considered. Non-conforming proposals are defined as those that do not meet the requirements of this RFP. The determination of whether an RFP requirement is substantive or a mere formality shall reside solely within the State of Delaware.

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

9. Concise Proposals

The State of Delaware discourages overly lengthy and costly proposals. It is the desire that proposals be prepared in a straightforward and concise manner. Unnecessarily elaborate brochures or other promotional materials beyond those sufficient to present a complete and effective proposal are not desired. The State of Delaware's interest is in the quality and responsiveness of the proposal.

10. Realistic Proposals

It is the expectation of the State of Delaware that vendors can fully satisfy the obligations of the proposal in the manner and timeframe defined within the proposal. Proposals must be realistic and must represent the best estimate of time, materials and other costs including the impact of inflation and any economic or other factors that are reasonably predictable.

The State of Delaware shall bear no responsibility or increase obligation for a vendor's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.

11. Confidentiality of Documents

All documents submitted as part of the vendor's proposal will be deemed confidential during the evaluation process. Vendor proposals will not be available for review by anyone other than the State of Delaware/Proposal Evaluation Team or its designated agents. There shall be no disclosure of any vendor's information to a competing vendor prior to award of the contract.

The State of Delaware is a public agency as defined by state law, and as such, it is subject to the Delaware Freedom of Information Act, 29 *Del. C.* Ch. 100. Under the law, all the State of Delaware's records are public records (unless otherwise declared by law to be confidential) and are subject to inspection and copying by any person. Vendor(s) are advised that once a proposal is received by the State of Delaware and a decision on contract award is made, its contents will become public record and nothing contained in the proposal will be deemed to be confidential except proprietary information.

See Confidentiality and Proprietary Information form provided at the bottom of the RFP. Vendors shall follow the format provided, and include the form with the bidder's proposal.

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

Vendor(s) shall not include any information in their proposal that is proprietary in nature or that they would not want to be released to the public. Proposals must contain sufficient information to be evaluated and a contract written without reference to any proprietary information. If a vendor feels that they cannot submit their proposal without including proprietary information, they must adhere to the following procedure or their proposal may be deemed unresponsive and will not be recommended for selection. Vendor(s) must submit such information in a separate, sealed envelope labeled "Proprietary Information" with the RFP number. The envelope must contain a letter from the Vendor's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not "public record" as defined by 29 *Del. C.* § 10002(d), and briefly stating the reasons that each document meets the said definitions.

Upon receipt of a proposal accompanied by such a separate, sealed envelope, the State of Delaware will open the envelope to determine whether the procedure described above has been followed.

12. Multi-Vendor Solutions (Joint Ventures)

Multi-vendor solutions (joint ventures) will be allowed only if one of the venture partners is designated as the "**prime contractor**". The "**prime contractor**" must be the joint venture's contact point for the State of Delaware and be responsible for the joint venture's performance under the contract, including all project management, legal and financial responsibility for the implementation of all vendor's systems. If a joint venture is proposed, a copy of the joint venture agreement clearly describing the responsibilities of the partners must be submitted with the proposal. Services specified in the proposal shall not be subcontracted without prior written approval by the State of Delaware, and approval of a request to subcontract shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of the work. Further, vendor shall be and remain liable for all damages to the State of Delaware caused by negligent performance or non-performance of work by its subcontractor or its sub-subcontractor.

Multi-vendor proposals must be a consolidated response with all cost included in the cost summary. Where necessary, RFP response pages are to be duplicated for each vendor.

a. Primary Vendor

The State of Delaware expects to negotiate and contract with only one "prime vendor". The State of Delaware will not accept any proposals that reflect an equal teaming arrangement or from vendors who are co-bidding on this RFP. The prime vendor will be responsible for the management of all subcontractors.

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

Any contract that may result from this RFP shall specify that the prime vendor is solely responsible for fulfillment of any contract with the State as a result of this procurement. The State will make contract payments only to the awarded vendor. Payments to any-subcontractors are the sole responsibility of the prime vendor (awarded vendor).

Nothing in this section shall prohibit the State of Delaware from the full exercise of its options under Section IV.B.16 regarding multiple source contracting.

b. Sub-Contracting

The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, vendors assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. **The prime vendor shall be wholly responsible for the entire contract performance whether or not subcontractors are used.** Any sub-contractors must be approved by State of Delaware.

c. Multiple Proposals

A primary vendor may not participate in more than one proposal in any form. Sub-contracting vendors may participate in multiple joint venture proposals.

13. Sub-Contracting

The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, vendors assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

Use of subcontractors must be clearly explained in the proposal, and subcontractors must be identified by name. Any sub-contractors must be approved by State of Delaware.

See Subcontractor Information Form attached to the bottom of the RFP. The responding vendor shall provide a separate subcontractor form for each separate subcontractor it plans to utilize to meet the State's requirements.

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

14. Discrepancies and Omissions

Vendor is fully responsible for the completeness and accuracy of their proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of vendor. Should vendor find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, vendor shall notify the State of Delaware's Designated Contact, in writing, of such findings at least ten (10) days before the proposal opening. This will allow issuance of any necessary addenda. It will also help prevent the opening of a defective proposal and exposure of vendor's proposal upon which award could not be made. All unresolved issues should be addressed in the proposal.

Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the Designated Contact, in writing, no later than ten (10) calendar days prior to the time set for opening of the proposals.

a. RFP Question and Answer Process

The State of Delaware will allow written requests for clarification of the RFP. All questions will be consolidated into a single set of responses and posted on the State's website at <http://bids.delaware.gov> by 4.30 PM November 4, 2011. Vendors' names will be removed from questions in the responses released. Questions should be submitted by 4:00 PM, November 2, 2011 by email to Kimberly Cuffee at Kimberly.Cuffee@state.de.us in the following format. Deviations from this format will not be accepted.

Section number

Paragraph number

Page number

Text of passage being questioned

Question

Questions not submitted electronically shall be accompanied by a CD and questions shall be formatted in Microsoft Word.

15. State's Right to Reject Proposals

The State of Delaware reserves the right to accept or reject any or all proposals or any part of any proposal, to waive defects, technicalities or any specifications (whether they be in the State of Delaware's specifications or vendor's response), to sit and act as sole judge of the merit and qualifications of each product offered, or to solicit new proposals on the same project or on a modified project which may include portions of the originally proposed project as the State of Delaware may deem necessary in the best interest of the State of Delaware.

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

16. State's Right to Cancel Solicitation

The State of Delaware reserves the right to cancel this solicitation at any time during the procurement process, for any reason or for no reason. The State of Delaware makes no commitments expressed or implied, that this process will result in a business transaction with any vendor.

This RFP does not constitute an offer by the State of Delaware. Vendor's participation in this process may result in the State of Delaware selecting your organization to engage in further discussions and negotiations toward execution of a contract. The commencement of such negotiations does not, however, signify a commitment by the State of Delaware to execute a contract nor to continue negotiations. The State of Delaware may terminate negotiations at any time and for any reason, or for no reason.

17. State's Right to Award Multiple Source Contracting

Pursuant to 29 *Del. C.* § 6986, the State of Delaware may award a contract for a particular professional service to two or more vendors if the agency head makes a determination that such an award is in the best interest of the State of Delaware.

18. Notification of Withdrawal of Proposal

Vendor may modify or withdraw its proposal by written request, provided that both proposal and request is received by the State of Delaware prior to the proposal due date. Proposals may be re-submitted in accordance with the proposal due date in order to be considered further.

Proposals become the property of the State of Delaware at the proposal submission deadline. All proposals received are considered firm offers at that time.

19. Revisions to the RFP

If it becomes necessary to revise any part of the RFP, an addendum will be posted on the State of Delaware's website at <http://bids.delaware.gov>. The State of Delaware is not bound by any statement related to this RFP made by any State of Delaware employee, contractor or its agents.

20. Exceptions to the RFP

Any exceptions to the RFP, or the State of Delaware's terms and conditions, must be highlighted and included in writing in the proposal. Acceptance of exceptions is within the sole discretion of the evaluation committee.

21. Award of Contract

The final award of a contract is subject to approval by the State of Delaware. The State of Delaware has the sole right to select the successful vendor(s) for award, to reject any proposal as unsatisfactory or non-responsive, to award a contract to other than the lowest priced proposal, to award multiple contracts, or not to award a contract, as a result of this RFP.

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

Notice in writing to a vendor of the acceptance of its proposal by the State of Delaware and the subsequent full execution of a written contract will constitute a contract, and no vendor will acquire any legal or equitable rights or privileges until the occurrence of both such events.

a. RFP Award Notifications

After reviews of the evaluation committee report and its recommendation, and once the contract terms and conditions have been finalized, the State of Delaware will award the contract.

The contract shall be awarded to the vendor whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP.

It should be explicitly noted that the State of Delaware is not obligated to award the contract to the vendor who submits the lowest bid of the vendor who receives the highest total point score, rather the contract will be awarded to the vendor whose proposal is the most advantageous to the State of Delaware. The award is subject to the appropriate State of Delaware approvals.

After a final selection is made, the winning vendor will be invited to negotiate a contract with the State of Delaware; remaining vendors will be notified in writing of their selection status.

C. RFP Evaluation Process

An evaluation team composed of representatives of the State of Delaware will evaluate proposals on a variety of quantitative criteria. Neither the lowest price nor highest scoring proposal will necessarily be selected.

The State of Delaware reserves full discretion to determine the competence and responsibility, professionally and/or financially, of vendors. Vendors are to provide in a timely manner any and all information that the State of Delaware may deem necessary to make a decision.

1. Proposal Evaluation Team

The Proposal Evaluation Team shall be comprised of representatives of the State of Delaware. The Team shall determine which vendors meet the minimum requirements pursuant to selection criteria of the RFP and procedures established in 29 *Del. C.* §§ 6981 and 6982. The Team may negotiate with one or more vendors during the same period and may, at its discretion, terminate negotiations with any or all vendors. The Team shall make a recommendation regarding the award to the Cabinet Secretary of Safety and Homeland Security who shall have final authority, subject to the provisions of this RFP and 29 *Del. C.* § 6982, to award a contract to the successful vendor in the best interests of the State of Delaware.

2. Proposal Selection Criteria

The Proposal Evaluation Team shall assign up to the maximum number of points for each Evaluation Item to each of the proposing vendor's proposals.

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

All assignments of points shall be at the sole discretion of the Proposal Evaluation Team.

The proposals all contain the essential information on which the award decision shall be made. The information required to be submitted in response to this RFP has been determined by the State of Delaware to be essential for use by the Team in the bid evaluation and award process. Therefore, all instructions contained in this RFP shall be met in order to qualify as a responsive and responsible contractor and participate in the Proposal Evaluation Team's consideration for award. Proposals which do not meet or comply with the instructions of this RFP may be considered non-conforming and deemed non-responsive and subject to disqualification at the sole discretion of the Team.

The Team reserves the right to:

- Select for contract or for negotiations a proposal other than that with lowest costs.
- Reject any and all proposals or portions of proposals received in response to this RFP or to make no award or issue a new RFP.
- Waive or modify any information, irregularity, or inconsistency in proposals received.
- Request modification to proposals from any or all vendors during the contract review and negotiation.
- Negotiate any aspect of the proposal with any vendor and negotiate with more than one vendor at the same time.
- Select more than one vendor pursuant to 29 *Del. C.* §6986. Such selection will be based on the following criteria:
 - Location (geographical),
 - Capacity to meet requirements
 - Other criteria necessary for a quality cost-effective project.

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

a. Criteria Weight

All proposals shall be evaluated using the same criteria and scoring process. The following criteria shall be used by the Evaluation Team to evaluate proposals:

Criteria	Weight
The qualifications and experience of the persons to be assigned to the project.	50
The ability to perform the work in the time allotted for the project, as demonstrated by their proposed commitment of management, personnel, and other resources. Project Management experience.	50
The approach to performing the tasks set forth in the Scope of Work as expressed in the Management Summary and Work Plan. Thoroughness and completeness of the proposal relative to the requirements.	50
The demonstrated experience in providing equipment/services of comparable specifications/scope and value.	50
The understanding of the problem; details of the offering; how you plan to meet the requirements of this RFP.	40
The background, experience, resources, reputation, financial resources and years in business and references.	50
The provider's location relative to the location of required services.	40
The price proposal/pricing structure or Total Proposed Cost.	40
The training plan and training facilities/staff relative to the requirements of this RFP.	40
The management reports and reporting requirements	50
The provider's facilities and site visit evaluation.	40
Total	500 Points

3. Proposal Clarification

The Evaluation Team may contact any vendor in order to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Proposals may not be modified as a result of any such clarification request.

4. References

The Evaluation Team may contact any customer of the vendor, whether or not included in the vendor's reference list, and use such information in the evaluation process. Additionally, the State of Delaware may choose to visit existing installations of comparable systems, which may or may not include vendor personnel. If the vendor is involved in such site visits, the State of Delaware will pay travel costs only for State of Delaware personnel for these visits.

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

5. Oral Presentations

Selected vendors may be invited to make oral presentations to the Evaluation Team. The vendor representative(s) attending the oral presentation shall be technically qualified to respond to questions related to the proposed system and its components.

All of the vendor's costs associated with participation in oral discussions and system demonstrations conducted for the State of Delaware are the vendor's responsibility.

5. Attachments

The following attachments should be considered part of the Request for Proposal and included as part of the bidder's proposal response paperwork.

Attachment 1 – Non-Collusion Statement

Attachment 2 – Exceptions

Attachment 3 – Confidentiality and Proprietary Information

Attachment 4 – Business References

Attachment 5 – Subcontractor Information Form

Attachment 6 – Office of Minority and Women Business Enterprise Certification, only provide if applicable to your entity

Vendors have been asked to respond to the requirements of the RFP, and demonstrate ability to meet DSHS' needs as outlined in the RFP. Additionally, vendors are encouraged to review the scoring criteria presented on the previous page to ensure that their RFP responses address each of the scoring criteria presented. The failure of a vendor to successfully demonstrate capabilities requested in the RFP, and to consider the criteria by which the vendor is scored, may have a negative impact on the State's ability to adequately score the responding bidder's proposal.

D. Contract Terms and Conditions

1. General Information

- a. The term of the contract between the successful bidder and the State shall be for one (1) year with no additional annual extensions. The State reserves the right to extend this contract on a month-to-month basis for a period of up to three months after the term of the full contract has been completed
- b. The selected vendor will be required to enter into a written agreement with the State of Delaware. The State of Delaware reserves the right to incorporate standard State contractual provisions into any contract negotiated as a result of a proposal submitted in response to this RFP. Any proposed modifications to the terms and conditions of the standard contract are subject to review and approval by the State of Delaware. Vendors will be required to sign the contract for all services, and may be required to sign additional agreements.
- c. The selected vendor or vendors will be expected to enter negotiations with the State of Delaware, which will result in a formal contract between parties. Procurement will be in accordance with subsequent contracted agreement. This

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

RFP and the selected vendor's response to this RFP will be incorporated as part of any formal contract.

- d. The State of Delaware's standard contract will most likely be supplemented with the vendor's software license, support/maintenance, source code escrow agreements, and any other applicable agreements. The terms and conditions of these agreements will be negotiated with the finalist during actual contract negotiations.
- e. The successful vendor shall promptly execute a contract incorporating the terms of this RFP within twenty (20) days after award of the contract. No vendor is to begin any service prior to receipt a State of Delaware purchase order signed by two authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office and the Department of Finance. The purchase order shall serve as the authorization to proceed in accordance with the bid specifications and the special instructions, once it is received by the successful vendor.
- f. If the vendor to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another vendor. Such vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.

2. Collusion or Fraud

Any evidence of agreement or collusion among vendor(s) and prospective vendor(s) acting to illegally restrain freedom from competition by agreement to offer a fixed price, or otherwise, will render the offers of such vendor(s) void.

By responding, the vendor shall be deemed to have represented and warranted that its proposal is not made in connection with any competing vendor submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud; that the vendor did not participate in the RFP development process and had no knowledge of the specific contents of the RFP prior to its issuance; and that no employee or official of the State of Delaware participated directly or indirectly in the vendor's proposal preparation.

Advance knowledge of information which gives any particular vendor advantages over any other interested vendor(s), in advance of the opening of proposals, whether in response to advertising or an employee or representative thereof, will potentially void that particular proposal.

3. Lobbying and Gratuities

Lobbying or providing gratuities shall be strictly prohibited. Vendors found to be lobbying, providing gratuities to, or in any way attempting to influence a State of Delaware employee or agent of the State of Delaware concerning this RFP or the award of a contract resulting from this RFP shall have their proposal immediately rejected and shall be barred from further participation in this RFP.

The selected vendor will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the State of Delaware shall have the right to annul any contract resulting from this RFP without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

All contact with State of Delaware employees, contractors or agents of the State of Delaware concerning this RFP shall be conducted in strict accordance with the manner, forum and conditions set forth in this RFP.

4. Solicitation of State Employees

Until contract award, vendors shall not, directly or indirectly, solicit any employee of the State of Delaware to leave the State of Delaware's employ in order to accept employment with the vendor, its affiliates, actual or prospective contractors, or any person acting in concert with vendor, without prior written approval of the State of Delaware's contracting officer. Solicitation of State of Delaware employees by a vendor may result in rejection of the vendor's proposal.

This paragraph does not prevent the employment by a vendor of a State of Delaware employee who has initiated contact with the vendor. However, State of Delaware employees may be legally prohibited from accepting employment with the contractor or subcontractor under certain circumstances. Vendors may not knowingly employ a person who cannot legally accept employment under state or federal law. If a vendor discovers that they have done so, they must terminate that employment immediately.

5. General Contract Terms

a. Independent contractors

The parties to the contract shall be independent contractors to one another, and nothing herein shall be deemed to cause this agreement to create an agency, partnership, joint venture or employment relationship between parties. Each party shall be responsible for compliance with all applicable workers compensation, unemployment, disability insurance, social security withholding and all other similar matters. Neither party shall be liable for any debts, accounts, obligations or other liability whatsoever of the other party, or any other obligation of the other party to pay on the behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums or any income or other similar taxes.

It may be at the State of Delaware's discretion as to the location of work for the contractual support personnel during the project period. The State of Delaware shall provide working space and sufficient supplies and material to augment the Contractor's services.

b. Non-Appropriation

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

c. Licenses and Permits

In performance of the contract, the vendor will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful vendor. The vendor shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2502.

Prior to receiving an award, the successful vendor shall either furnish the State of Delaware with proof of State of Delaware Business Licensure or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone to one of the following numbers: (302) 577-8200—Public Service, (302) 577-8205—Licensing Department.

Information regarding the award of the contract will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject vendor to applicable fines and/or interest penalties.

d. Notice

Any notice to the State of Delaware required under the contract shall be sent by registered mail to:

**Department of Safety and Homeland Security
Office of the Secretary, Attn: Central Fiscal Office
P.O Box 818
Dover, Delaware 19901**

e. Indemnification

1. General Indemnification.

By submitting a proposal, the proposing vendor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the vendor's its agents and employees' performance work or services in connection with the contract, regardless of whether such suits, actions, claims or liabilities are based upon acts or failures to act attributable, ole or part, to the State, its employees or agents.

2. Proprietary Rights Indemnification

Vendor shall warrant that all elements of its solution, including all equipment, software, documentation, services and deliverables, do not and will not infringe upon or violate any patent, copyright, trade

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

secret or other proprietary rights of any third party. In the event of any claim, suit or action by any third party against the State of Delaware, the State of Delaware shall promptly notify the vendor in writing and vendor shall defend such claim, suit or action at vendor's expense, and vendor shall indemnify the State of Delaware against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without limitation, litigation costs, lost employee time, and counsel fees) whether or not such claim, suit or action is successful.

If any equipment, software, services (including methods) products or other intellectual property used or furnished by the vendor (collectively "Products") is or in vendor's reasonable judgment is likely to be, held to constitute an infringing product, vendor shall at its expense and option either:

- (a) Procure the right for the State of Delaware to continue using the Product(s);
- (b) Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or
- (c) Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of the Contract, or only alters the Product(s) to a degree that the State of Delaware agrees to and accepts in writing.

f. Insurance

- 1. Vendor recognizes that it is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the vendor's negligent performance under this contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the vendor in their negligent performance under this contract.
- 2. The vendor shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The vendor is an independent contractor and is not an employee of the State of Delaware.
- 3. During the term of this contract, the vendor shall, at its own expense, carry insurance minimum limits as follows:

a.	Comprehensive General Liability	\$1,000,000
----	---------------------------------	-------------

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

b.	Professional Liability/Misc. Error & Omissions/Product Liability	\$1,000,000/\$3,000,000
----	--	-------------------------

If the contractual service requires the transportation of departmental clients or staff, the vendor shall, in addition to the above coverages, secure at its own expense the following coverage:

a.	Automotive Liability (Bodily Injury)	\$100,000/\$300,000
b.	Automotive Property Damage (to others)	\$ 25,000

4. The vendor shall provide a certificate of insurance as proof that the vendor has the required insurance.

g. Performance Requirements

The selected Vendor will warrant that its possesses, or has arranged through subcontractors, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all Federal and State laws, and County and local ordinances, regulations and codes.

h. Warranty

The Vendor will provide a warranty that the deliverables provided pursuant to the contract will function as designed for a period of no less than one (1) year from the date of system acceptance. The warranty shall require the Vendor correct, at its own expense, the setup, configuration, customizations or modifications so that it functions according to the State's requirements.

i. Costs and Payment Schedules

All contract costs must be as detailed specifically in the Vendor's cost proposal. No charges other than as specified in the proposal shall be allowed without written consent of the State of Delaware. The proposal costs shall include full compensation for all taxes that the selected vendor is required to pay.

The State of Delaware will require a payment schedule based on defined and measurable milestones. Payments for services will not be made in advance of work performed. The State of Delaware may require holdback of contract monies until acceptable performance is demonstrated (as much as 25%).

j. Penalties

The State of Delaware may include in the final contract penalty provisions for non-performance, such as liquidated damages.

k. Termination for Cause.

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

If for any reasons, or through any cause, the Vendor fails to fulfil in timely and proper manner his obligations under the contract, or if the Vendor violates any of the covenants, agreements or stipulations of the contract, the State of Delaware shall thereupon have the right to terminate the contract by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Vendor under the contract shall, at the option of the State of Delaware, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is useable to the State of Delaware.

I. Termination for Convenience

The State of Delaware may terminate the contract at any time by giving written notice of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Vendor under the contract shall, at the option of the State of Delaware, become its property, and the Vendor shall be entitled to compensation for any satisfactory work completed on such documents and other materials which is useable to the State of Delaware. If the contract is terminated by the State of Delaware as so provided, the Vendor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Vendor as covered by the contract, less payments of compensation previously made. Provided however, that if less than 60 percent of the services covered by the contract have been performed upon the effective date of termination, the Vendor shall be reimbursed (in addition to the above payment) for that portion of actual out of pocket expenses (not otherwise reimbursed under the contract) incurred by the Vendor during the contract period which are directly attributable to the uncompleted portion of the services covered by the contract.

m. Non-discrimination

In performing the services subject to this RFP the vendor will agree that it will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. The successful vendor shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practice. Failure to perform under this provision constitutes a material breach of contract.

n. Covenant against Contingent Fees

The successful vendor will warrant that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement of understanding for a commission or percentage, brokerage or contingent fee excepting bona-fide employees, bona-fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For breach or violation of this warranty the State of Delaware shall have the

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

right to annul the contract without liability or at its discretion to deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

o. Vendor Activity

No activity is to be executed in an off shore facility, either by a subcontracted firm or a foreign office or division of the vendor. The vendor must attest to the fact that no activity will take place outside of the United States in its transmittal letter. Failure to adhere to this requirement is cause for elimination from future consideration.

p. Work Product

All materials and products developed under the executed contract by the vendor are the sole and exclusive property of the State. The vendor will seek written permission to use any product created under the contract.

p. Contract Documents

The RFP, the purchase order, the executed contract and any supplemental documents between the State of Delaware and the successful vendor shall constitute the contract between the State of Delaware and the vendor. In the event there is any discrepancy between any of these contract documents, the following order of documents governs so that the former prevails over the latter: contract, State of Delaware's RFP, Vendor's response to the RFP and purchase order. No other documents shall be considered. These documents will constitute the entire agreement between the State of Delaware and the vendor.

q. Applicable Law

The laws of the State of Delaware shall apply, except where Federal Law has precedence. The successful vendor consents to jurisdiction and venue in the State of Delaware.

In submitting a proposal, Vendors certify that they comply with all federal, state and local laws applicable to its activities and obligations including:

- (1) the laws of the State of Delaware;
- (2) the applicable portion of the Federal Civil Rights Act of 1964;
- (3) the Equal Employment Opportunity Act and the regulations issued there under by the federal government;
- (4) a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury; and
- (5) that programs, services, and activities provided to the general public under resulting contract conform with the Americans with Disabilities Act of 1990, and the regulations issued there under by the federal government.

If any vendor fails to comply with (1) through (5) of this paragraph, the State of Delaware reserves the right to disregard the proposal, terminate the contract, or consider the vendor in default.

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

The selected vendor shall keep itself fully informed of and shall observe and comply with all applicable existing Federal and State laws, and County and local ordinances, regulations and codes, and those laws, ordinances, regulations, and codes adopted during its performance of the work.

r. Scope of Agreement

If the scope of any provision of the contract is determined to be too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the contract shall not thereby fail, but the scope of such provisions shall be curtailed only to the extent necessary to conform to the law.

s. Other General Conditions

- (1) Current Version** – “Packaged” application and system software shall be the most current version generally available as of the date of the physical installation of the software.
- (2) Current Manufacture** – Equipment specified and/or furnished under this specification shall be standard products of manufacturers regularly engaged in the production of such equipment and shall be the manufacturer’s latest design. All material and equipment offered shall be new and unused.
- (3) Volumes and Quantities** – Activity volume estimates and other quantities have been reviewed for accuracy; however, they may be subject to change prior or subsequent to award of the contract.
- (4) Prior Use** – The State of Delaware reserves the right to use equipment and material furnished under this proposal prior to final acceptance. Such use shall not constitute acceptance of the work or any part thereof by the State of Delaware.
- (5) Status Reporting** – The selected vendor will be required to lead and/or participate in status meetings and submit status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken, until final system acceptance.
- (6) Regulations** – All equipment, software and services must meet all applicable local, State and Federal regulations in effect on the date of the contract.

**Department of Safety and Homeland Security
Physical Testing & Laboratory Services
SHS11016-PHYTESTLAB**

- (7) **Changes** – No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of the State of Delaware.
- (8) **Additional Terms and Conditions** – The State of Delaware reserves the right to add terms and conditions during the contract negotiations.

E. RFP Miscellaneous Information

1. No Press Releases or Public Disclosure

Vendors may not release any information about this RFP. The State of Delaware reserves the right to pre-approve any news or advertising releases concerning this RFP, the resulting contract, the work performed, or any reference to the State of Delaware with regard to any project or contract performance. Any such news or advertising releases pertaining to this RFP or resulting contract shall require the prior express written permission of the State of Delaware.

2. RFP Reference Library

The State of Delaware has made every attempt to provide the necessary information within this RFP. The State of Delaware will make the reference library available only to the winning bidder.

3. Definitions of Requirements

To prevent any confusion about identifying requirements in this RFP, the following definition is offered: The words *shall*, *will* and/or *must* are used to designate a mandatory requirement. Vendors must respond to all mandatory requirements presented in the RFP. Failure to respond to a mandatory requirement may cause the disqualification of your proposal.

4. Production Environment Requirements

The State of Delaware requires that all hardware, system software products, and application software products included in proposals be currently in use in a production environment by a least three other customers, have been in use for at least six months, and have been generally available from the manufacturers for a period of six months. Unreleased or beta test hardware, system software, or application software will not be acceptable.

Department of Safety and Homeland Security
Physical Testing and Laboratory Services
Contract No. SHS11016-PHYTESTLAB

Attachment 1

OPENING DATE: Thursday, November 17, 2011 at 3 p.m. EDT (Local Time)

NON-COLLUSION STATEMENT

This is to certify that the undersigned Vendor has neither directly nor indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this proposal, **and further certifies that it is not a sub-contractor to another Vendor who also submitted a proposal as a primary Vendor in response to this solicitation** submitted this date to the State of Delaware, Department of Safety and Homeland Security.

It is agreed by the undersigned Vendor that the signed delivery of this bid represents the Vendor's acceptance of the terms and conditions of this Request for Proposal including all specifications and special provisions.

NOTE: Signature of the authorized representative **MUST** be of an individual who legally may enter his/her organization into a formal contract with the State of Delaware, Department of Safety and Homeland Security.

COMPANY NAME _____ Check one)

<input type="checkbox"/>	Corporation
<input type="checkbox"/>	Partnership
<input type="checkbox"/>	Individual

NAME OF AUTHORIZED REPRESENTATIVE
(Please type or print) _____

SIGNATURE _____ TITLE _____

COMPANY ADDRESS _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

FEDERAL E.I. NUMBER _____ STATE OF DELAWARE
LICENSE NUMBER _____

(circle one)		(circle one)		(circle one)	
COMPANY CLASSIFICATIONS: CERT. NO. _____	Yes No	Yes No	Yes No	Yes No	Yes No
	<u>Women Business Enterprise(WBE)</u>	<u>Minority Business Enterprise (MBE)</u>		<u>Disadvantaged Business Enterprise (DBE)</u>	

[The above table is for information and statistical use only.]

PURCHASE ORDERS SHOULD BE SENT TO:

(COMPANY NAME) _____

ADDRESS _____

CONTACT _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

AFFIRMATION: Within the past five years, has your firm, any affiliate, any predecessor company or entity, owner, Director, officer, partner or proprietor been the subject of a Federal, State, Local government suspension or debarment?

YES _____ NO _____ if yes, please explain _____

THIS PAGE SHALL BE SIGNED, NOTARIZED AND RETURNED WITH YOUR PROPOSAL TO BE CONSIDERED

SWORN TO AND SUBSCRIBED BEFORE ME this _____ day of _____, 20 _____

Notary Public _____ My commission expires _____

City of _____ County of _____ State of _____

Signature / Printed Name

Business References

List a minimum of three business references, including the following information:

- Business Name and Mailing address
- Contact Name and phone number
- Number of years doing business with
- Type of work performed

Please do not list any State Employee as a business reference. If you have held a State contract within the last 5 years, please list the contract.

1. Business Name/Mailing Address:
Contact Name/Phone Number:
Number of years doing business with :
Describe type of work performed:
2. Business Name/Mailing Address:
Contact Name/Phone Number:
Number of years doing business with :
Describe type of work performed:
3. Business Name/Mailing Address:
Contact Name/Phone Number:
Number of years doing business with :
Describe type of work performed:

State of Delaware

Office of Minority and Women Business Enterprise Certification Application



Complete application and send via email, fax or mail to:

Office of Minority and Women Business Enterprise (OMWBE)
100 Enterprise Place Suite # 4 Dover, DE 19904-8202
Telephone: (302) 857-4554 Fax: (302) 677-7086
Email: deomwbe@state.de.us

Web site: <http://gss.omb.delaware.gov/omwbe/index.shtml>

Link to Certification Application: <http://gss.omb.delaware.gov/omwbe/certify.shtml>